

APPLICANTS:     Rouquier *et al.*  
U.S.S.N.:        09/747,155

relied upon to provide art that is anticipatory or might render obvious any other SEQ ID NO; and to search all species in a single application would be unduly burdensome.

Applicants provisionally elect the species of SEQ ID NO:225, **with traverse**.

Applicants request modification of the present election requirement under 37 C.F.R.

§1.143. The M.P.E.P. states:

If the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, **the examiner must examine all claims on the merits, even though they are directed to independent and distinct inventions**. In such a case, the examiner will not follow the procedure described below and will not require restriction. Since the decisions in *In re Weber*, 580 F.2d 455, 198 USPQ 328 (CCPA 1978) and *In re Haas*, 580 F.2d 461, 198 USPQ 334 (CCPA 1978), **it is improper for the Office to refuse to examine that which applicants regard as their invention, unless the subject matter in a claim lacks unity of invention**. In *re Harnish*, 631 F.2d 716, 206 USPQ 300 (CCPA 1980); and *Ex parte Hozumi*, 3 USPQ2d 1059 (Bd. Pat. App. & Int. 1984). **Broadly, unity of invention exists where compounds included within a Markush group (1) share a common utility and (2) share a substantial structural feature disclosed as being essential to that utility.**

The polypeptides and polynucleotides of the present invention are not individually distinct and independent, but are, in fact, **all derivatives of the olfactory receptor (ORX) superfamily of nucleotides and proteins**.

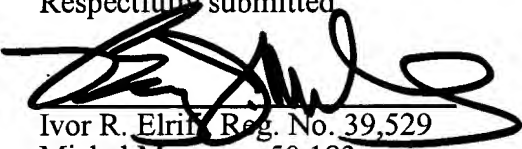
As indicated on page 223, lines 3-20, the ORX genes, which are the subject of the present invention have been obtained using PCR using consensus ORX primer pairs OR5B-OR3B and OR3.1-OR7.1. The use of two pairs of consensus primers rendered the sampling representative of the ORX gene repertoire. Moreover, the homology for all the genes identified (>80%) is important in the domain between the primers. As a result of this homology, the ORX genes disclosed in the present patent application are not patentably distinct. Applicants thus submit that the requirement to elect a single disclosed species is improper. Accordingly, Applicants respectfully request reconsideration and withdrawal of the present Election Requirement.

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### CONCLUSION

In view of the arguments made herein, Applicants respectfully submit that the outstanding Restriction/Election Requirement is improper and should be withdrawn. If the Examiner believes that a telephone conversation with Applicant's Attorney would be helpful in expediting prosecution of this application, the Examiner is encouraged to contact the undersigned at the telephone number provided below.

Respectfully submitted



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